

FIRST REGULAR SESSION

# HOUSE BILL NO. 1178

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES DUSENBERG (Sponsor), YATES, WILSON (119), SALVA, NANCE, EMERY, BROWN (30), HARRIS, FISCHER (107), BRINGER AND NOLTE (Co-sponsors).

2527L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 188.027 and 188.060, RSMo, and to enact in lieu thereof seven new sections relating to abortion, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 188.027 and 188.060, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 188.027, 188.060, 188.108, 334.245, 565.305, 565.310, and 565.315, to read as follows:

188.027. **1.** No abortion shall be performed [except with the prior, informed and written consent freely given of the pregnant woman.] **or induced on a woman without her voluntary and informed consent, given freely and without coercion. Consent to an abortion is voluntary and informed and given freely and without coercion, if and only if, at least twenty-four hours prior to the abortion:**

**(1) The physician who is to perform or induce the abortion has informed the woman, orally, reduced to writing, and in person, of the following:**

**(a) The name of the physician who will perform or induce the abortion;**

**(b) Medically accurate information that a reasonable patient would consider material to the decision of whether or not to undergo the abortion, including:**

**a. A description of the proposed abortion method;**

**b. The immediate and long-term medical risks to the woman associated with the proposed abortion method including, but not limited to, infection, hemorrhage, cervical tear or uterine perforation, harm to subsequent pregnancies or the ability to carry a**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 subsequent child to term, and possible adverse psychological effects associated with the  
16 abortion; and

17 c. The immediate and long-term medical risks to the woman, in light of the  
18 anesthesia and medication that is to be administered, the unborn child's gestational age,  
19 and the woman's medical history and medical condition;

20 (c) Alternatives to the abortion which shall include making the woman aware that  
21 information and materials shall be provided to her detailing such alternatives to the  
22 abortion;

23 (d) A statement that the physician performing or inducing the abortion is available  
24 for any questions concerning the abortion, together with the telephone number that the  
25 physician may be later reached to answer any questions that the woman may have;

26 (e) The location of the hospital that offers obstetrical or gynecological care located  
27 within thirty miles of the location where the abortion is performed or induced and at which  
28 the physician performing or inducing the abortion has clinical privileges and where the  
29 woman may receive follow-up care by the physician if complications arise;

30 (f) The gestational age of the unborn child at the time the abortion is to be  
31 performed or induced; and

32 (g) The anatomical and physiological characteristics of the unborn child at the time  
33 the abortion is to be performed or induced;

34 (2) The physician who is to perform or induce the abortion or a qualified  
35 professional has presented the woman, in person, printed materials provided by the  
36 department or an informational video provided by the department, which describes the  
37 probable anatomical and physiological characteristics of the unborn child at two-week  
38 gestational increments from conception to full term, including color photographs or images  
39 of the developing unborn child at two-week gestational increments. Such descriptions shall  
40 include information about brain and heart functions, the presence of external members  
41 and internal organs during the applicable stages of development and information on when  
42 the unborn child is viable. The printed materials or informational video shall prominently  
43 display the following statement: "The State of Missouri wants you to know that the life of  
44 your unborn child began at conception, and that your unborn child has protectable  
45 interests in his or her life, health, and well-being.";

46 (3) The physician who is to perform or induce the abortion or a qualified  
47 professional has presented the woman, in person, printed materials provided by the  
48 department or an informational video provided by the department, which describes the  
49 various surgical and drug-induced methods of abortion relevant to the stage of pregnancy,  
50 as well as the immediate and long-term medical risks commonly associated with each

51 **abortion method including, but not limited to, infection, hemorrhage, cervical tear or**  
52 **uterine perforation, harm to subsequent pregnancies or the ability to carry a subsequent**  
53 **child to term, and the possible adverse psychological effects associated with an abortion;**

54 **(4) The physician who is to perform or induce the abortion or a qualified**  
55 **professional shall provide the woman with the opportunity to view an active ultrasound**  
56 **of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible.**  
57 **The woman shall be provided with a geographically indexed list maintained by the**  
58 **department of health and senior services of health care providers, facilities, and clinics that**  
59 **perform ultrasounds, including those that offer ultrasound services free of charge. Such**  
60 **materials shall provide contact information for each provider, facility, or clinic including**  
61 **telephone numbers and, if available, web site addresses. Should the woman decide to**  
62 **obtain an ultrasound from a provider, facility, or clinic other than the abortion facility, the**  
63 **woman shall be offered a reasonable time to obtain the ultrasound examination before the**  
64 **date and time set for performing or inducing an abortion. The person conducting the**  
65 **ultrasound shall ensure that the active ultrasound image is of a quality consistent with**  
66 **standard medical practice in the community, contains the dimensions of the unborn child,**  
67 **and accurately portrays the presence of external members and internal organs, if present**  
68 **or viewable, of the unborn child. The auscultation of fetal heart tone must also be of a**  
69 **quality consistent with standard medical practice in the community;**

70 **(5) Prior to an abortion being performed or induced on an unborn child of twenty-**  
71 **two weeks of gestational age or older, the physician who is to perform or induce the**  
72 **abortion or a qualified professional has presented the woman, in person, printed materials**  
73 **provided by the department or an informational video provided by the department that**  
74 **offers information on the possibility of the abortion causing pain to the unborn child. This**  
75 **information shall include, but not be limited to the following:**

76 **(a) At least by twenty-two weeks of gestational age, the unborn child possesses all**  
77 **the anatomical structures, including pain receptors, spinal cord, nerve tracts, thalamus,**  
78 **and cortex, that are necessary in order to feel pain;**

79 **(b) A description of the actual steps in the abortion procedure to be performed or**  
80 **induced, and at which steps the abortion procedure could be painful to the unborn child;**

81 **(c) There is evidence that by twenty-two weeks of gestational age, unborn children**  
82 **seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted**  
83 **as a response to pain;**

84 **(d) Anesthesia is given to unborn children who are twenty-two weeks or more**  
85 **gestational age who undergo prenatal surgery;**

86 (e) Anesthesia is given to premature children who are twenty-two weeks or more  
87 gestational age who undergo surgery;

88 (f) Anesthesia or an analgesic is available in order to minimize or alleviate the pain  
89 to the unborn child;

90 (6) The physician who is to perform or induce the abortion or a qualified  
91 professional has presented the woman, in person, printed materials provided by the  
92 department explaining to the woman alternatives to abortion she may wish to consider.  
93 Such materials shall:

94 (a) Identify on a geographical basis public and private agencies available to assist  
95 a woman in carrying her unborn child to term, and to assist her in caring for her  
96 dependent child or placing her child for adoption, including agencies commonly known  
97 and generally referred to as pregnancy resource centers, crisis pregnancy centers,  
98 maternity homes, and adoption agencies. Such materials shall provide a comprehensive  
99 list by geographical area of the agencies, a description of the services they offer, and the  
100 telephone numbers and addresses of the agencies; provided that such materials shall not  
101 include any programs, services, organizations or affiliates of organizations that perform  
102 or induce, or assist in the performing or inducing, of abortions or refer for abortions;

103 (b) Explain the Missouri alternatives to abortion services program under section  
104 188.325, and any other programs and services available to pregnant women and mothers  
105 of newborn children offered by public and private agencies which assist a woman in  
106 carrying her unborn child to term and assist her in caring for her dependent child or  
107 placing her child for adoption, including, but not limited to prenatal care; maternal health  
108 care; newborn or infant care; mental health services; professional counseling services;  
109 housing programs; utility assistance; transportation services; food, clothing, and supplies  
110 related to pregnancy; parenting skills; educational programs; job training and placement  
111 services; drug and alcohol testing and treatment; and adoption assistance;

112 (c) Identify the state web site for the Missouri alternatives to abortion services  
113 program under section 188.325, and any toll-free number established by the state operated  
114 in conjunction with the program;

115 (d) Prominently display the statement: "There are public and private agencies  
116 willing and able to help you carry your child to term, and to assist you and your child after  
117 your child is born, whether you choose to keep your child or place him or her for adoption.  
118 The state of Missouri encourages you to contact those agencies before making a final  
119 decision about abortion. State law requires that your physician or a qualified professional  
120 give you the opportunity to call agencies like these before you undergo an abortion.";

121 (e) Prominently display the statement: "No one can coerce you to have an abortion.  
122 It is against the law for a husband, a boyfriend, a parent, a friend, a medical care provider,  
123 or any other person to coerce you in any way to have an abortion.";

124 (7) The physician who is to perform or induce the abortion or a qualified  
125 professional has presented the woman, in person, printed materials provided by the  
126 department or an informational video provided by the department explaining that the  
127 father of the unborn child is liable to assist in the support of the child, even in instances  
128 where he has offered to pay for the abortion. Such materials shall include information on  
129 the legal duties and support obligations of the father of a child, including, but not limited  
130 to, child support payments, and the fact that paternity may be established by the father's  
131 name on a birth certificate or statement of paternity, or by court action. Such printed  
132 materials or video shall also state that more information concerning paternity  
133 establishment and child support services and enforcement may be obtained by calling the  
134 family support division within the Missouri department of social services;

135 (8) The physician who is to perform or induce the abortion or a qualified  
136 professional shall inform the woman that it is unlawful for any person to coerce a woman  
137 to seek or obtain an abortion; and

138 (9) The physician who is to perform or induce the abortion or a qualified  
139 professional shall inform the woman that she is free to withhold or withdraw her consent  
140 to the abortion at any time without affecting her right to future care or treatment and  
141 without the loss of any state or federally funded benefits to which she might otherwise be  
142 entitled.

143 2. All information required to be provided to a woman considering abortion by  
144 subsection 1 of this section shall be presented to the woman individually, in the physical  
145 presence of the woman and in a private room, to protect her privacy, to maintain the  
146 confidentiality of her decision, to ensure that the information focuses on her individual  
147 circumstances, to ensure she has an adequate opportunity to ask questions, and to ensure  
148 that she is not a victim of coerced abortion. Should a woman be unable to read materials  
149 provided to her, they shall be read to her. Should a woman need an interpreter to  
150 understand the information presented in written materials or informational videos, an  
151 interpreter shall be provided to her. Should a woman ask questions concerning any of the  
152 information or materials, answers shall be provided in a language she can understand.

153 3. No abortion shall be performed or induced unless and until the woman upon  
154 whom the abortion is to be performed or induced certifies in writing on a checklist form  
155 provided by the department that she has been presented all the information required in  
156 subsection 1 of this section, that she has been provided the opportunity to view an active

157 **ultrasound image of the unborn child and hear the heartbeat of the unborn child if it is**  
158 **audible, and that she further certifies that she gives her voluntary and informed consent,**  
159 **freely and without coercion, to the abortion procedure.**

160 **4. No abortion shall be performed or induced on an unborn child of twenty-two**  
161 **weeks of gestational age or older, unless and until the woman upon whom the abortion is**  
162 **to be performed or induced has been provided the opportunity to choose to have an**  
163 **anesthetic or analgesic administered to eliminate or alleviate pain to the unborn child**  
164 **caused by the particular method of abortion to be performed or induced. The**  
165 **administration of anesthesia or analgesics shall be performed in a manner consistent with**  
166 **standard medical practice in the community.**

167 **5. No physician shall perform or induce an abortion unless and until the physician**  
168 **has obtained from the woman her voluntary and informed consent given freely and**  
169 **without coercion. If the physician has reason to believe that the woman is a victim of a**  
170 **coerced abortion, the physician or qualified professional shall inform the woman that**  
171 **services are available for victims of coerced abortion, and shall provide her with private**  
172 **access to a telephone and information about such services.**

173 **6. No physician shall perform or induce an abortion unless and until the physician**  
174 **has received and signed a copy of the form prescribed in subsection 3 of this section. The**  
175 **physician shall retain a copy of the form in the patient's medical record.**

176 **7. In the event of a medical emergency as provided by section 188.075, the physician**  
177 **who performed or induced the abortion shall clearly certify in writing the nature and**  
178 **circumstances of the medical emergency. This certification shall be signed by the physician**  
179 **who performed or induced the abortion, and shall be maintained under section 188.060.**

180 **8. No person or entity shall require, obtain, or accept payment for an abortion from**  
181 **or on behalf of a patient until at least twenty-four hours has passed since the time that the**  
182 **information required by subsection 1 has been provided to the patient. Nothing in this**  
183 **subsection shall prohibit a person or entity from notifying the patient that payment for the**  
184 **abortion will be required after the twenty-four-hour period has expired if she voluntarily**  
185 **chooses to have the abortion.**

186 **9. The term "qualified professional" as used in this section shall refer to a**  
187 **physician, physician assistant, registered nurse, licensed practical nurse, psychologist,**  
188 **licensed professional counselor, or licensed social worker, licensed or registered under**  
189 **chapter 334, 335, or 337, RSMo, acting under the supervision of the physician performing**  
190 **or inducing the abortion, and acting within the course and scope of his or her authority**  
191 **provided by law. The provisions of this section shall not be construed to in any way**

192 expand the authority otherwise provided by law relating to the licensure, registration, or  
193 scope of practice of any such qualified professional.

194 **10. Every abortion facility shall display signs that contain exclusively the following**  
195 **words: "NOTICE: No one can coerce you to have an abortion. It is against the law for**  
196 **a husband, a boyfriend, a parent, a friend, a medical care provider, or any other person**  
197 **to coerce you in any way to have an abortion.".** The signs shall be designed and located  
198 so that such signs can be easily read and ensure maximum visibility to women who enter  
199 the abortion facility considering whether to have an abortion; to women at the abortion  
200 facility receiving the information required by this section; and to women at the time that  
201 they give their consent to an abortion. The location of such signs in abortion facilities shall  
202 be specified by rules promulgated by the department and shall be a condition of licensure  
203 of any abortion facility under chapter 197, RSMo. The display of signs under this  
204 subsection does not discharge the duty to conduct an individual private consultation with  
205 a woman considering abortion under subsection 2 of this section.

206 **11. By November 30, 2009, the department shall produce the written materials,**  
207 **signs, informational videos and forms described in this section. Any written materials**  
208 **produced shall be printed in a typeface large enough to be clearly legible. All information**  
209 **shall be presented in an objective, unbiased manner designed to convey only accurate**  
210 **scientific and medical information. The department shall furnish the written materials,**  
211 **signs, informational videos, and forms at no cost and in sufficient quantity to any person**  
212 **who performs or induces abortions, or to any hospital or facility that provides abortions.**  
213 **The department shall make all information required by subsection 1 of this section**  
214 **available to the public through its department web site. The department shall maintain**  
215 **a toll-free, twenty-four-hour hotline telephone number where a caller can obtain**  
216 **information on a regional basis concerning the agencies and services described in**  
217 **subsection 1 of this section. No identifying information regarding persons who use the web**  
218 **site shall be collected or maintained. The department shall monitor the web site on a**  
219 **regular basis to prevent tampering and correct any operational deficiencies.**

220 **12. In order to preserve the compelling interest of the state to ensure that the choice**  
221 **to consent to an abortion is voluntary and informed, and given freely and without coercion,**  
222 **the department shall use the procedures for adoption of emergency rules under section**  
223 **536.025, RSMo, in order to promulgate all necessary rules, forms and other necessary**  
224 **material to implement this section by November 30, 2009.**

188.060. All medical records, reports, and other documents required to be kept under  
2 sections 188.010 to 188.085 shall be maintained in the permanent files of the abortion facility  
3 or hospital in which the abortion was performed for a period of [seven] ten years.

188.108. It shall never be a bona fide occupational qualification that an employee  
2 or applicant for employment seek or obtain an abortion.

334.245. 1. Notwithstanding any other provision of law to the contrary that may  
2 allow a person to provide services relating to pregnancy, including prenatal, delivery, and  
3 postpartum services, no person other than a licensed physician is authorized to perform  
4 or induce an abortion.

5 2. Any person who violates the provisions of this section is guilty of a class B felony.

565.305. As used in sections 565.305 to 565.315, the following words and phrases  
2 shall mean:

3 (1) "Abortion", the intentional destruction of the life of an embryo or fetus in his  
4 or her mother's womb or the intentional termination of the pregnancy of a mother with an  
5 intention other than to increase the probability of a live birth or to remove a dead or dying  
6 unborn child;

7 (2) "Abortion facility", a clinic, physician's office, or any other place or facility in  
8 which abortions are performed or induced other than a hospital;

9 (3) "Coerces a woman to seek or obtain an abortion", performs an act intended to  
10 cause a woman to seek or obtain an abortion against her will, or performs an act  
11 conditioned upon or precipitated by a woman disregarding or refusing a demand that she  
12 seek or obtain an abortion;

13 (4) "Family or household member", spouses, former spouses, persons related by  
14 blood or marriage, adults who are presently residing together or have resided together in  
15 the past, an adult who is or has been in a continuing social relationship of a romantic or  
16 intimate nature with the victim, and adults who have a child in common regardless of  
17 whether they have been married or have resided together at any time;

18 (5) "Unborn child", the offspring of human beings from the moment of conception  
19 until birth and at every stage of his or her biological development, including the human  
20 conceptus, zygote, morula, blastocyst, embryo, and fetus;

21 (6) "Victim of coerced abortion", the victim of the crime of coercing an abortion,  
22 whether or not the victim has reported the crime prior to seeking or obtaining an abortion.

565.310. 1. A person commits the crime of coercing an abortion if the person  
2 knowingly coerces a woman to seek or obtain an abortion by:

3 (1) Committing, attempting to commit, or conspiring to commit:

4 (a) An offense defined by any other statute of this state against the woman or her  
5 family or household member;

6 (b) Assault as defined in section 565.050, 565.060, or 565.070;

7 (c) Domestic assault as defined in section 565.072, 565.073, or 565.074; or



8 (d) Stalking or aggravated stalking as defined in section 565.225;

9 (2) Forcibly or without her knowledge administering to or causing the woman to  
10 ingest any poison, drug, or other substance intended to cause an abortion, or attempting  
11 or threatening to do so;

12 (3) Discharging, attempting to discharge, or threatening to discharge the female  
13 employee; or changing, attempting to change, or threatening to change her compensation,  
14 terms, conditions, or privileges of employment; or

15 (4) Revoking, attempting to revoke, or threatening to revoke a scholarship awarded  
16 to the woman by a public or private institution of higher education.

17 2. Coercing an abortion is classified as follows if it is done by the commission of any  
18 of the acts specified in subsection 1 of this section and the act is otherwise an offense  
19 defined by any other statute of this state:

20 (1) Class A felony in which the court may impose an additional term of  
21 imprisonment not to exceed ten years, or an additional fine not to exceed ten thousand  
22 dollars, or both, if the offense committed is a class A felony;

23 (2) Class A felony, if the offense committed is a class B felony;

24 (3) Class B felony, if the offense committed is a class C felony;

25 (4) Class C felony, if the offense committed is a class D felony;

26 (5) Class D felony, if the offense committed is a class A misdemeanor;

27 (6) Class A misdemeanor, if the offense committed is a class B or C misdemeanor  
28 or an infraction.

29 3. Coercing an abortion is a class A misdemeanor if it is done by the commission  
30 of any of the acts specified in subsection 1 of this section and the act is not otherwise an  
31 offense defined by any other statute of this state.

32 4. This section shall not be construed as creating, expanding, or otherwise  
33 endorsing a right to an abortion.

565.315. 1. Except in the case of a medical emergency as that term is defined in  
2 section 188.039, RSMo, any person who knowingly performs or induces or assists in  
3 performing or inducing an abortion on a woman, with knowledge that the predominant  
4 reason the woman is seeking or obtaining the abortion is that the woman is a victim of  
5 coerced abortion, is guilty of a class C felony.

6 2. Whenever a physician, abortion facility, hospital, or other health care provider  
7 has reasonable cause to suspect that a woman is a victim of a coerced abortion and the  
8 victim is:

9 (1) A child as defined in section 210.110, RSMo, then a report of suspected abuse  
10 shall be made to the department of social services under section 210.115, RSMo;

11           **(2) A vulnerable person as defined in section 630.005, RSMo, then a report of a**  
12 **suspected abuse shall be made to the department of mental health under sections 565.218**  
13 **and 630.163, RSMo;**

14           **(3) An adult who has been subject to abuse by a present or former adult family or**  
15 **household member, or who has been the victim of stalking, then the physician, abortion**  
16 **facility, hospital, or other health care provider shall provide the woman with information**  
17 **on orders of protection under sections 455.010 to 455.085, RSMo.**

18           **3. Under the provisions of chapter 188, RSMo, or any other provision of law**  
19 **requiring that a woman give her consent freely and without coercion prior to an abortion,**  
20 **whenever a physician knows that the predominant reason the woman is seeking or**  
21 **obtaining an abortion is that the woman is a victim of coerced abortion, the physician shall**  
22 **certify that the woman lacks the consent required by law.**

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